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2012 IL App (3d) 110229-U
Nos. 3-11-0229 and 3-11-0230 cons.

Order filed July 26, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 13th Judicial Circuit, Grundy County, Illinois
Plaintiff-Appellant,)	
v.)	Appeal Nos. 3-11-0229 and 3-11-0230
KENNETH D. HAMMONS,)	Circuit Nos. 10-CF-210, 10-TR-8682, 10-TR-8683, 10-TR-8684, and 10-DT-116
Defendant-Appellee.)	Honorable Robert C. Marsaglia, Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* In a case in which the defendant was charged with, *inter alia*, driving under the influence, but was pulled over for improper lane usage (625 ILCS 5/11-709(a) (West 2010)), the circuit court granted the defendant's motion to suppress and petition to rescind statutory summary suspension. On appeal, the appellate court held that the circuit court erred when it ruled that the police officer who pulled the defendant over lacked a reasonable, articulable suspicion to effect a traffic stop. Accordingly, the appellate court reversed the circuit court's rulings on the defendant's motion to suppress and petition to rescind statutory summary suspension, and remanded the case for further proceedings.

¶ 2 The defendant, Kenneth D. Hammons, was charged, *inter alia*, with driving under the influence (625 ILCS 5/11-501(a)(2) (West 2010)). He filed a petition to rescind his statutory summary suspension and a motion to suppress evidence, both of which the circuit court granted after it found that the police officer lacked a reasonable, articulable suspicion to stop the defendant. On appeal, the State argues that the circuit court's rulings were erroneous because the officer did in fact have a reasonable, articulable suspicion to stop the defendant. We reverse and remand.

¶ 3 **FACTS**

¶ 4 On August 20, 2010, the defendant received citations for, *inter alia*, driving under the influence (625 ILCS 5/11-501(a)(2) (West 2010)). The defendant also received notice that his driver's license was subject to a summary suspension for 12 months (625 ILCS 5/11-501.1(c), 6-208.1(a)(1) (West 2010)) because he failed a breath test.

¶ 5 The defendant filed a petition to rescind the statutory summary suspension of his driver's license, as well as a motion to suppress, in which he argued that the officer lacked a reasonable, articulable suspicion to effect a traffic stop.

¶ 6 At the hearing on the defendant's petition and motion, Illinois State Police trooper Walt Willis testified that on the night of August 20, 2010, he was traveling westbound on Interstate 80 in the left lane when he observed a red pickup truck in the right lane "cross[] into the right shoulder across the solid white fog line with both right tires." Willis stated that the pickup truck's tires went approximately 1½ feet over the line for "[j]ust a few seconds." A video recording from Willis's police car was entered into evidence, which showed that the pickup truck

did in fact cross over the solid white fog line. Willis followed the pickup truck for a while before activating his lights. The pickup truck did not commit any other traffic violations or cross over any other lane markers until after Willis activated his lights. Willis effected a traffic stop of the defendant at approximately 11:15 p.m. for a violation of section 709(a) of the Illinois Vehicle Code (Code) (625 ILCS 5/11-709(a) (West 2010)).

¶ 7 Defense counsel argued that, pursuant to *People v. Hackett*, 406 Ill. App. 3d 209 (2010), *rev'd*, *People v. Hackett*, 2012 IL 111781, the defendant's single, momentary deviation from his lane was insufficient to create a reasonable, articulable suspicion of criminal activity, and therefore he should not have been stopped by Willis. The State attempted to distinguish this court's decision in *Hackett* on its facts, but the circuit court found that it was bound by the case. Accordingly, the court found that Willis lacked a reasonable, articulable suspicion to stop the defendant, and granted the defendant's motion to suppress and petition to rescind statutory summary suspension. The State appealed the court's rulings on the same day that our supreme court granted the petition for leave to appeal from this court's decision in *Hackett*.

¶ 8 ANALYSIS

¶ 9 On appeal, the State argues that the circuit court's rulings were erroneous because the officer did in fact have a reasonable, articulable suspicion to stop the defendant.

¶ 10 When reviewing a circuit court's decision on a motion to suppress, we grant great deference to the court's findings of historical fact and will not disturb those findings unless they are against the manifest weight of the evidence. *Hackett*, 2012 IL 111781, at ¶ 18. However, we are free to undertake our own assessment of the facts as they relate to the legal issues presented by the case, and, therefore, we review the court's ultimate ruling on the motion under the *de novo*

standard. *Hackett*, 2012 IL 111781, at ¶ 18.

¶ 11 In this case, Willis stopped the defendant for a possible violation of section 11-709(a) of the Code, which states: "[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety." 625 ILCS 5/11-709(a) (West 2010).

¶ 12 In this court's *Hackett* decision, the defendant was driving in the left lane of a four-lane roadway when a police officer began following him. *Hackett*, 406 Ill. App. 3d at 210. The officer observed the defendant's passenger side tires " 'slightly' " or " 'barely' " cross over the black-and-white striped line dividing the left lane from the right lane. *Hackett*, 406 Ill. App. 3d at 211. The deviation occurred twice before the officer effected a traffic stop. *Hackett*, 406 Ill. App. 3d at 211. This court held that section 11-709(a), as construed by *People v. Smith*, 172 Ill. 2d 289 (1996), criminalizes a driver's lane deviation only when "the driver of the vehicle actually drives for some reasonably appreciable distance in more than one lane of traffic." *Hackett*, 406 Ill. App. 3d at 214. Accordingly, this court held that the officer "lacked probable cause to stop defendant for a violation of section 11-709(a)." *Hackett*, 406 Ill. App. 3d at 215. This court also stated that "we would also find that the facts and circumstances surrounding the traffic stop did not provide a reasonable, articulable suspicion to stop defendant based on [the officer's] stated reason of a violation of section 11-709(a)." *Hackett*, 406 Ill. App. 3d at 215.

¶ 13 In our supreme court's *Hackett* decision, our supreme court granted leave to appeal to answer the question of " 'whether the appellate court erroneously found there was no *reasonable suspicion* for a traffic stop where the uncontested testimony showed defendant swerved twice across a lane divider of traffic.' " (Emphasis in original.) *Hackett*, 2012 IL 111781, at ¶ 19.

Initially, our supreme court noted:

"though traffic stops are frequently supported by 'probable cause' to believe that a traffic violation has occurred, as differentiated from the 'less exacting' standard of 'reasonable, articulable suspicion' that justifies an 'investigatory stop,' the latter will suffice for purposes of the fourth amendment irrespective of whether the stop is supported by probable cause." *Hackett*, 2012 IL 111781, at ¶ 20.

After clarifying that "the distance a motorist travels while violating the proscription of section 11-709(a) is not a dispositive factor in the applicable analysis" (*Hackett*, 2012 IL 111781, at ¶ 26), our supreme court then clarified that section 11-709(a) contains two components: (1) the driver must have deviated from his or her established lane; and (2) it must have been practicable for the driver to remain in that lane. *Hackett*, 2012 IL 111781, at ¶ 27. While both components are needed to establish probable cause and to obtain a conviction, only the former is needed to justify an investigatory stop:

"Where, as here, a police officer observes multiple lane deviations, for no obvious reason, an investigatory stop is proper. For probable cause and conviction, there must be something more: *affirmative* testimony that defendant deviated from his proper lane of travel *and* that no road conditions necessitated the movement. An investigatory stop in this situation allows the officer to inquire further into the reason for the lane deviation, either by inquiry of the driver or verification of the condition of the roadway where the deviation occurred." (Emphasis in original.) *Hackett*, 2012 IL 111781, at ¶ 28.

¶ 14 In applying the law to the facts of the case, our supreme court noted that the officer

observed the defendant deviate from his established lane for no obvious reason and held that the officer was therefore justified in effecting an investigatory stop for a possible violation of section 11-709(a). *Hackett*, 2012 IL 111781, at ¶ 29. Accordingly, our supreme court reversed this court's *Hackett* decision, held that the circuit court erred when it granted the defendant's motion to suppress, and remanded the case to the circuit court for further proceedings. *Hackett*, 2012 IL 111781, at ¶ 31.

¶ 15 In this case, Willis testified that he observed the defendant's vehicle cross over the solid white fog line dividing the defendant's established lane from the shoulder of the road. Applying the principles of our supreme court's *Hackett* decision to the facts of this case, we hold that Willis in fact had a reasonable, articulable suspicion to justify an investigatory stop of the defendant for a possible violation of section 11-709(a). *Hackett*, 2012 IL 111781, at ¶ 29 (noting that "[a]lthough [the officer's] testimony suggests that he was focused on the defendant's driving, rather than road conditions—he 'could not recall' any potholes or other obstructions in the roadway—his observation of two lane deviations was sufficient to justify an investigatory traffic stop").

¶ 16 For the foregoing reasons, we hold that the circuit court erred when it granted the defendant's motion to suppress. Further, because the court's decision to grant the defendant's petition to rescind statutory summary suspension was predicated on the court's ruling that Willis lacked a reasonable, articulable suspicion to stop the defendant, we also hold that the court erred when it granted the defendant's petition to rescind statutory summary suspension.

¶ 17 **CONCLUSION**

¶ 18 The judgment of the circuit court of Grundy County is reversed and the cause is remanded

for further proceedings.

¶ 19 Reversed and remanded.